

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.417 of 2012

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Roop Narayan Singh, Son of Late Sitaram Singh, Resident of Shakhnauli,
Tola-Karhapur, P.O.- Khanpur (Dighwara), Pargana, Goa, P.S.- Avtarnagar,
District-Saran. **-Plaintiff/Appellant/Appellant.**

Versus

1. Devendra Singh, Son of Late Jainandan Singh.
2. Rajesh Singh, Son of Late Bhola Singh.
3. Mukesh Singh, Son of Late Bhola Singh.
4. Rekha Devi, Wife of Ajay Singh Daughter of Late Bhola Singh.
All resident of Village-Fatehpur, P.O.-Khanpur, P.S.- Awatarnagar,
District-Saran.
5. Sarita Devi, Wife of Jitendra Singh, Daughter of Late Bhola Singh,
Resident of Village- Mainpur, P.O.-Dighwara, P.S.,-Dighwara, District-
Saran.
6. Guriya Devi, Wife of Ram Kumar Singh, Daughter of Late Bhola Singh,
R/o Village-Mirpur Juara, P.S.-Awatarnagar, District-Saran.
7. Madhu Sudan.
8. Rabindra Singh.
9. Sadhu Singh.
10. All sons of Late Paras Singh @ Parma Singh, wrongly typed as Paras
Singh, Resident of Village-Rasauchak, P.S.-Nayagaon, District-Saran.
11. Kasni Devi, Wife of Rajesh Singh, Resident of Village-Dewaria, P.S.-
Parhara, District-Ara.
12. Murti Devi, Wife of Prem Chand Singh, Resident of Village-Semaria,
P.S.-Ara, District-Ara.
13. Dhanwanti Devi, Wife of Late Ramayan Singh.
14. Gabbar Singh, Son of Late Ramayan Singh.
Both Resident of Village- Rathore Newaji Tola, P.S.-Mehia Gurukul,
P.S.-Chapra, District-Saran.
15. Suraj Singh, Son of Late Ram Salona Singh, Resident of Village-Newaji
Tola, P.S.-Chapra, District-Saran.
16. Gautam Singh.
17. Ganesh Singh.

18. Sanjay Singh.

All Sons of Late Panchu Singh.

19. Mahajani Devi Wife of Panchu Singh, Resident of Vilage-Pasakchak ,
P.S.+P.O.-Nayagaon, District- Saran.

20. Rajbanshi Devi, Wife of Parmatma Singh, Daughter of Dharamnath
Singh, Resident of Village- Pakhwara, P.S.-Rivilganj, District-Saran at
present resident of Village-Bhorhopur, P.O.-Khanpur, P.S.-Awtarnagar,
District-Saran.

21. Bhola @ Laxmi Narayan Rai, Son of Late Harihar Rai.

22. Baijnath Rai, Son of Late Harihar Rai.

23. Bunni Lal Rai, Son of Suraj Rai.

24. Shiv Sagar Rai Son of Late Mahendra Rai.

All resident of Village- Rampur Jaiti, P.S.- Dariyarpur, District-Saran.

25. Kishori Kuar, Wife of Late Bisheshwar Singh.

26. Veena Devi, Wife of Yogendra Singh, Daughter of Bisheshwar Singh.

All resident of village- Chakhoripur, P.S.+P.O.- Nayagaon, District-
Saran.

27. Punam Devi, Wife of Vidhya Singh, Daughter of Late Bisheshwar
Singh, Resident of Village- Dharamchak, P.S.+P.O.- Dariapur, District-
Saran.

28. Indu Devi Wife of Manoj Kumar Singh, D/o Late Bisheshwar Singh,
Resident of Village- Afri, P.O.- Jalalpur, District- Patna at present
Resident of Sakhanauli, Tola Mardapur, P.O.- Khanpur, District-
Dighwara, District- Saran.

29. Name not known wife of Ram Jiwan Rai.

30. Ram Kumar Rai.

31. Daroga Rai.

32. Amod Rai.

33. Nunu Rai.

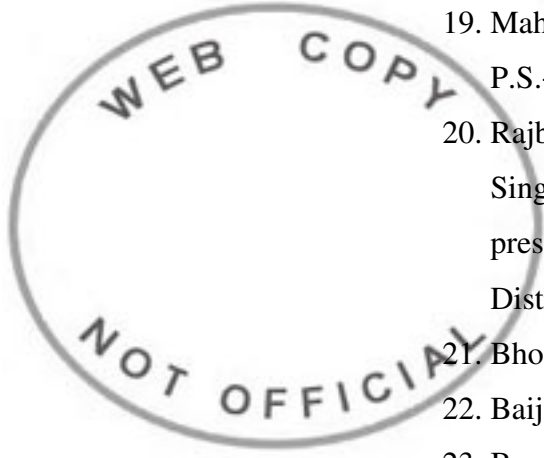
34. Banaras Rai.

All sons of Ram Jiwan Rai, Resident of Village-Rampur, Jaiti, P.O.-
Jaitpur, P.S.-Dariapur, District- Saran.

35. Mostt Phuljharia Kuar, Wife of Late Nagina Rai.

36. Vijay Rai.

37. Sohan Rai.



38. Mohan Rai.

All sons of Late Nagina Rai.

39. Usha Devi wife of Late Sanjay Rai D/o Late Nagina Rai, R/o Village- Rampur Jaiti, P.O.-Jaitipur, P.S.- Dariapur, District-Saran.

40. Mostt Lakhpatia Wife of Late Shyam Sundra Rai.

41. Lakhminia Wife of Chandrama Rai, D/o Late Sundar Rai, R/o Village- Rampur Jaiti, P.O.- Jaitipur, P.S.- Dariapur, District- Saran.

42. Kapil Rai.

43. Jagdeo Rai.

44. Ram Eqbal Rai.

All sons of Late Sital Rai, Resident of Village- Rampur Jaiti, P.O.- Jaitipur, P.S.-Dariapur, District-Saran.

45. Sipahi Rai.

46. Bhardul Rai.

47. Gorakh Rai.

All Sons of Late Shiv Ratan Rai.

48. Lakhpatia Devi Wife of Late Surendra Rai.

49. Nagendra Rai, Son of Late Hulas Rai.

50. Ambika Rai Son of Late Ram Pyare Rai.

51. Chandrika Rai, Son of Late Lakhchan Rai, Resident of Village-Rampur, Jaiti, P.O.- Jaitipur, P.S.- Dariapur, District- Saran. Respondents.

with

Second Appeal No.418 of 2012

1. Roop Narayan Singh, Son of Late Sitaram Singh.

2. Shubh Narayan Singh.

3. Uday Singh.

4. Ajay Singh.

All sons of Rup Narayan Singh.

All Resident of Village- Shakhnauli, Tola-Karhapur, P.O.- Khanpur (Dighwara), Pargana, Goa, P.S.- Avtarnagar, District-Saran.

--Defendants/Appellants/Appellants.

Versus

Parasnath Singh, Son of Late Ram Prasad Singh, Resident of Village-

Shakhnauli, Bharhopur , P.O.- Dighwara, Pargana, Goa, P.S.- Avtarnagar,
District-Saran. **-Plaintiff/Respondent/Respondent.**

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Appearance :

(In SA No.417 of 2012)

For the Appellant/s : Mr. S.S.Dwivedi, Sr.Adv
Mrs. Sangeeta Sharma, Adv.

For the Respondent/s :

(In SA No.418 of 2012)

For the Appellant/s : Mr. S.S.Dwivedi, Sr.Adv.
Mrs. Sangeeta Sharma, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

8 12-01-2015 Heard Mr S.S.Dwivedi, the learned senior counsel
appearing on behalf of the appellant in both the appeals.

On the prayer of the learned counsel for the appellant
in S.A.No.417/12, this Court by order dated 27.06.2014 directed
the S.A.No.418/12 to be listed side by side to this appeal. In both
the appeals, the appellant is common and the impugned judgment
and decree is also common.

In order to appreciate the submissions raised by the
learned senior counsel for the appellant in both the appeals, the
necessary factual score need to be exposted. From the undisputed
genealogy, it would appear that Raghubar Singh had two sons
Bharosa Singh and Talwar Singh. Bharosa Singh died leaving
behind a daughter Dularo Kuer after whose death, the branch of
Bharosa Singh became extinct. Talwar Singh died leaving behind
three sons namely Musan Singh, Mangani Singh and Bujhawan

Singh, out of whom Mangani Singh died unmarried issueless leaving behind his two brothers Musan Singh and Bujhawan Singh as his only heirs. Musan Singh died leaving behind his widow Munesari Kuer and three daughters namely Sundra Devi, Sona Devi and Bhagwati Devi. Bujhawan Singh died leaving behind his widow Murta Kuer and a daughter Tapesara Devi. Rup Narayan Singh is undisputedly the son of Tapesara Devi and has filed the T.S.No.108/98 impleading the descendants and successors-in-interest of the two daughters Sundra Devi and Bhagwati Devi(one daughter Sona Devi's branch having become extinct) of Munesari Kuer as defendants. This suit was filed for a decree of permanent injunction against the defendants restraining them for interfering in possession of the plaintiff over the property described in Schedule-I of the plaint or from doing any overt act for the said property.

The case of the plaintiff Rup Narayan Singh in T.S.No.108/98, in short, was that after the death of Dularo Kuer the entire property of the family of Raghubar Singh devolved upon Talwar Singh and after his demise upon his three sons Musan Singh, Mangani Singh and Bujhawan Singh, and after the death of Mangani Singh, unmarried and issueless, Musan Singh and Bujhawan Singh became entitled to the entire property of Talwar

Singh by rule of survivorship. It was further case of the plaintiff that Musan Singh and Bujhawan Singh became separate before the recent survey operation and the recent survey khatian with regard to the property of the share of Bujhawan Singh was prepared in the name of his widow Murta Kuer as he had passed away by that time. It was further case of the plaintiff that after the death of Murta Kuer, her only daughter Tapesara Devi inherited the property of Murta Kuer and after death of Tapesara Devi, the plaintiff being her son inherited her share. The plaintiff in this manner has claimed the property, recorded in the recent survey khatian in the name of Murta Kuer (described in Schedule –I of the plaint) as her maternal grandson. It was also the case of the plaintiff that the defendants who were the maternal grandsons of Munesari Kuer have been wrongly advancing their claim over the suit property and interfering in possession of the plaintiff over the same. The plaintiff thus has also asserted his exclusive title and possession over the suit land.

The defendants' case, in a nutshell, was that the suit property did not exclusively belong to the plaintiff rather he was entitled only over the half of the same and another half belonged to the defendants. It was the case of the defendants that the survey entry of the suit property in the exclusive name of

Murta Kuer was wrong and the name of Munesari Kuer should have been entered alongwith Murta Kuer as both Murta Kuer and Munesari Kuer were alive at the time of recent survey operation and Munesari Kuer was also in possession of the property of her share. The defendants also claimed to have transferred the parts of the suit property as title-holders and asserted that the transferees were in peaceful possession.

From the judgments of both the courts below, it transpires that another T.S.No.146/01 was filed by Parasnath Singh as plaintiff against Rup Narayan Singh (the plaintiff of T.S.No.108/98 and his sons) for decree of permanent injunction restraining the defendants from interfering in possession of the plaintiff over the suit property described in detail in Schedule-I of the plaint. Though the facts in detail with regard to this suit has not been mentioned in the judgments of both the courts below but from the plaint and written statement of this suit which have been produced for perusal before the Court during the course of submission, it transpires that the plaintiff Parasnath Singh has claimed his title and possession over the suit property on the basis of a registered sale deed dated 01.06.1943 executed by Ram Salona Singh in favour of plaintiff's cousin Bisheshwar Nath Singh and having been allotted to the share of the plaintiff in

partition through the process of the court. The heirs of Ram Salona Singh were admittedly parties in T.S.No.108/98. The defendant Rup Narayan Singh resisted the claim of the plaintiff Parasnath Singh on the basis of the assertion that the suit property exclusively belonged to his maternal grandmother Murta Kuer in whose name, the recent survey khatian was also prepared and had been inherited by the defendant after the death of his mother. It is also apparent from the written statement of this suit that the defendant Rup Narayan Singh had mentioned the fact of filing the T.S.No.108/98 with regard to the property inherited by him through his maternal grandmother Murta Kuer.

From paragraph-1 of the judgment of the trial court, it appears that both the suits i.e. T.S.No.108/98 and T.S.No.146/01 were heard analogously and it was also mentioned that the decision in the T.S.No.108/98 would also apply to T.S.No.146/01. The material issues framed by the trial court related to the exclusive title and possession of the plaintiff over the property mentioned in Schedule-I of the plaint and the validity of the entry of the name of Murta Kuer in the recent survey khatian. On both the issues, the trial court returned the finding that the plaintiff had failed to prove his title and possession over the entire suit land and found the plaintiff to be entitled to title and possession of the half

share of the suit property and the defendants to be entitled to title and possession over the remaining half. It was also held that the entry of the exclusive name of Murta Kuer in the recent survey khatian with regard to the properties mentioned therein was wrong as Munesari Kuer was also entitled to half share in the same. The T.S.No.108/98 was therefore dismissed and the T.S.No.146/01 was decreed and defendants of that suit were permanently restrained from interfering in possession of the plaintiff of that suit.

The aforesaid judgment and decree was assailed by Rup Narayan Singh as appellant by filing two appeals, which were heard analogously. After reappraisal of evidence and pleadings of the parties, the appellate court below affirmed the findings of the trial court and dismissed both the appeals. These two second appeals thereafter have been filed.

The learned senior counsel for the appellant has firstly submitted that the trial of the aforesaid two suits analogously was a mistrial as the parties and the disputed land in both the suits were different. It has been submitted that the grave material irregularity has been committed by both the courts below in deciding one suit on the basis of the evidence in another suit. It has further been canvassed by the learned senior counsel that both the courts below



have committed error in deciding only one issue and that too upon the basis of surmises and conjectures, and the judgments therefore of both the courts below are vitiated on that score. It has been propounded that the facts of T.S.No.146/01 were not at all considered by both the courts below but still the decree has been granted to the plaintiff of that case against this appellant who was defendant in that suit. It has further been argued that both the courts below ought to have framed the issue regarding the validity of the sale deed dated 25.05.1982 said to have been executed in favour of Tapesara Devi mother of the appellant by Ram Salona Singh regarding the properties of Murta Kuer in view of the specific assertion made by the plaintiff in that regard and the failure to do so has vitiated the impugned judgments. Referring to the proposed substantial questions of law and the copy of the plaint of T.S.No.108/98 filed during the course of submission, it has also been argued that the courts below and the appellate court below in particular has misread and misconstrued the pleadings and evidence on record and the findings have been recorded on the basis of the surmises alone.

After considering the submissions on behalf of the appellant as well as the judgments of both the courts below and the pleadings of the two suits as produced on behalf of the

appellant during the course of the argument, it is limpid on the basis of the admitted facts that the entire property of the family of Raghubar Singh devolved upon Musan Singh and Bujhawan Singh. Murta Kuer was widow of Bujhawan Singh in whose name the recent survey khatian with regard to the suit property has been prepared. The plaintiff claims to have inherited the property of Murta Kuer as her maternal grandson (daughter's son). The defendants in T.S.No.108/98 are the descendants of Munesari Kuer widow of Musan Singh. It is the case of the plaintiff that there had been partition between Musan Singh and Bujhawan Singh who died before the recent survey operation and the suit property of the share of Bujhawan Singh was recorded in the name of his widow Murta Kuer. To the contrary the case of the defendants that the suit property was not the exclusive property of Murta Kuer rather it is the property of family of Talwar Singh in which Munesari Kuer had also got half share and the recent survey khatian for the same was wrongly prepared exclusively in the name of Murta Kuer.

The plaintiff Parasnath Singh in T.S.No.146/01 has claimed his title and possession over the suit property on the basis of purchase by registered sale deed from Ram Salona Singh with the assertion that Ram Salona Singh got the property in his share

by inheritance from his maternal grandmother Munesari Kuer. The heirs of Ram Salona Singh (since deceased) are admittedly defendants in the T.S. No.108/98. The appellant Rup Narayan Singh as plaintiff in this suit claimed the suit property to be exclusively belonging to his maternal grandmother Murta Kuer and asserted that he got the same by inheritance. From these facts alongwith the facts earlier mentioned, it is manifest that the centrirorial issue in both the suits i.e. T.S.No.108/98 and T.S.No.146/01 was as to whether the suit property in both the suits exclusively belonged to Murta Kuer through whom the plaintiff Rup Narayan Singh had staked his claim or Munesari Kuer had also got half share in the same through whom the defendants in T.S.No.108/98 and the purchaser from them as plaintiff in T.S.No.146/01 had asserted their claim. It is obvious therefore that in T.S.No. 146/01 the plaintiff Parasnath Singh has put up no other basis for his claim except the case set up by the defendants in T.S.No. 108/98. The defendant Rup Narayan Singh in this suit, who was plaintiff in T.S.No. 108/98, in his written statement had also not put forward any other case than the case pleaded by him as plaintiff in T.S.No.108/98 and it is further apparent from his written statement that he had also made specific reference of T.S.No.108/98.

It does not appear from the records including the memo of appeal in S.A.No.418/12 that the appellant has raised any objection in the trial of two suits analogously. From the impugned judgment of the appellate court below also it does not appear that any such objection has been raised on behalf of the appellant. During the course of his submissions also the learned senior counsel has expressed his inability to inform the court regarding any such objection having been raised earlier.

Considering the submission on behalf of the appellant in the backdrop of the facts as aforementioned, it becomes evident that the appellant in S.A.No. 418/12 is trying to gain mileage on the basis that the facts of T.S.No. 146/01 has not been mentioned in detail in the impugned judgments. From the facts and submissions this Court is unable to find that the appellant Rup Narayan Singh as defendant in T.S.No.146/01 could have led any other evidence as no other and different material fact was raised in his written statement. Both the suits i.e. T.S.No.146/01 and T.S.No.108/98 have been tried analogously with the full knowledge of the appellant Rup Narayan Singh who also participated in the trial and thereafter filed two appeals without raising any objection in that regard and thus this Court is not persuaded to hold that the trial of T.S.No. 146/01 analogously with

T.S.No. 108/98 has resulted in mistrial as submitted and the impugned judgments of both the courts below, therefore, can be indicted on that score at the second appellate stage.

It has next been argued that both the courts below have failed to discharge their duties by failing to decide any other issue except the issue no.7 pertaining to the validity of the entry of the name of Murta Kuer in the recent survey khatain . From the perusal of the judgment of the trial court, however, it is reflected that the finding has been recorded on all the issues including the issue nos. 6 and 7 which were material issues. It is pertinent to mention here that the issue no.6 pertained to the exclusive title and possession of the plaintiff over the suit property described in Schedule-I of the plaint and issue no.7 related to the entry of the name of the Murta Kuer in the recent survey khatian. The findings by the trial court have been recorded on all the issues against the defendant. Thereafter from the perusal of the judgment of appellate court below, it is further transparent from paragraph-10 that both the parties have confined their submissions on the only issue pertaining to the validity of the entry in the recent survey khatian. The appellate court below, therefore, on that basis has proceeded to determine that issue/point alone and after reappraisal of the evidence has concurred with the findings of the trial court

that the recent survey khatian of the suit land only in the name of Murta Kuer is wrong as Munesari Kuer was also entitled to half share in the same. It has been strenuously argued on behalf of the appellant that both the courts below have erred in law in not framing the issue with regard to the legality and validity of the sale deed dated 17. 05.1982 said to have been executed by Ram Salona Singh in favour of Tapesara Devi who was mother of the appellant, with regard to the properties of Murta Kuer. It has been submitted that this sale deed was created by Ram Salona Singh for the purpose of evidence, and therefore, the said document is void and not binding on the mother of the appellant. It has been submitted that without determining the validity of this sale deed which has been specifically stated by the plaintiff in his plaint to be void document, the learned courts below have placed reliance on the same for recording a finding against the plaintiff. From the perusal of the judgments of both the courts below it does not appear that any specific relief with regard to the sale deed dated 17.05.1982 has been prayed by the plaintiff in the suit. The suit has admittedly been framed as a suit for permanent injunction simpliciter. From the perusal of the judgments of both the courts below, it further transpires that the defendants have produced (Ext. B/3 the sale deed dated 03.07.1941, Ext. B/2 the sale deed dated



30.04.1941 and Ext. B the sale deed dated 01.06.1943) executed by their predecessors with regard to the suit properties and it has also been found that in some of the sale deeds the father of the plaintiff also appeared as witness. All these sale deeds were registered document and the purchasers therefrom have also been examined as witnesses on behalf of the defendants in the suit who have claimed to be in possession of the parts of the suit properties purchased by them or their predecessors. The appellant as plaintiff has not claimed any relief with regard to these sale deeds and the court below in paragraph -37 has taken notice of this fact that all these sale deeds are old documents and in the knowledge of the plaintiff -appellant Rup Narayan Singh who has not chosen to assail any of these sale deeds. In this view of the matter there is no substance in the submission on behalf of the appellant that both the courts below have erred in not framing the specific issue with regard to the sale deed dated 17.05.1982 executed by one of the defendants in favour of the mother of the appellant with regard to a part of the suit property.

The findings by both the courts below have been recorded after elaborate scrutiny of the evidence and pleadings of the parties and this Court is not persuaded to find perversity in any manner in the same. It is well settled that the civil disputes are

decided on the basis of preponderance of probability and the courts below appear to have recorded the findings, accordingly. The issues of fact have now been concluded by concurrent findings of fact.

Ex consequenti, this Court does not find any substantial question of law arising for consideration in both the appeals, which are, accordingly, dismissed.

(V. Nath, J)

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